

# EXHIBIT D

1 UNITED STATES DISTRICT COURT  
2 FOR THE DISTRICT OF SOUTH CAROLINA  
3 CHARLESTON DIVISION

4 IN RE: AQUEOUS )  
5 FILM-FORMING FOAMS )  
6 (AFFF) PRODUCTS ) MDL NO.  
7 LIABILITY LITIGATION ) 2:18-mn-2873-RMG  
8 \_\_\_\_\_ )  
9 THIS DOCUMENT RELATES )  
10 TO ALL CASES )

11 THURSDAY, AUGUST 19, 2021  
12 CONFIDENTIAL - PURSUANT TO PROTECTIVE ORDER

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14 Remote videotaped deposition of 3M  
15 Company 30(b)(6) designee Jon Gerber, held  
16 remotely at the location of the witness in  
17 Cottage Grove, Minnesota, commencing at  
18 9:02 a.m. Eastern, on the above date, before  
19 Carrie A. Campbell, Registered Diplomat  
20 Reporter and Certified Realtime Reporter.

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25

1 factors, and then the potential for  
2 widespread distribution and potential for  
3 widespread exposure.

4 Q. Okay. We'll get to that.

5 But death is a nontrivial  
6 adverse effect in Mr. Gerber's opinion,  
7 right?

8 A. Yes.

9 Q. Okay. So let's keep reading.

10 Under Pronounced  
11 Bioaccumulation it's written, "Measurements  
12 and indicators of pronounced bioaccumulation,  
13 heretofore unknown to the administrator,  
14 including bioaccumulation in fish beyond  
15 5,000 times water concentration in a 30-day  
16 exposure or having an N-octanol/water  
17 partition coefficient greater than 25,000,  
18 should be reported when coupled with  
19 potential for widespread exposure and any  
20 nontrivial adverse effect."

21 Right?

22 A. That's correct.

23 Q. Okay. Let's try this. True or  
24 false: By 1980, 3M was in possession of  
25 information that PFOS was a bioaccumulative

1 compound, that it was widespread in the blood  
2 of the general population, and that it killed  
3 rhesus monkeys that were exposed to it.

4 True or false?

5 A. Based on my review of the  
6 documents, 3M had all of -- had those pieces  
7 of information, although it --  
8 bioaccumulation, again, I think that's  
9 that -- maybe it was the slow elimination  
10 rate that was recognized at the time, but all  
11 of those informations need -- all of that  
12 information needs to be put together and  
13 judgment applied in making a TSCA 8(e)  
14 reporting decision.

15 Q. Right. And 3M did that.

16 3M had all of that information  
17 and decided not to disclose it at that time  
18 in 1980, right?

19 A. Yes. I've reviewed documents  
20 that -- you know, after the -- those studies  
21 were conducted, that information was reviewed  
22 against EPA's reporting criteria, and the  
23 company made the determination that the  
24 information was not substantial risk  
25 information under TSCA 8(e).

1 discussing interpretation of TSCA 8(e).

2 Q. Okay. Let's read the first  
3 paragraph.

4 It says, "Over 400 industry  
5 representatives heard the Environmental  
6 Protection Agency's toxic substances staff  
7 review issues related to enforcement of  
8 Section 8(e) of the Act in a sometimes stormy  
9 meeting on December 7th."

10 Did I read that correctly, sir?

11 A. Yes.

12 Q. And you knew, sir, that  
13 industry was not a big fan of this law being  
14 enacted because it put tremendous  
15 requirements on the chemical industry, right?

16 A. I really can't speak for the  
17 state of mind of industry at the time, so  
18 that's beyond my understanding.

19 Q. Okay. So let's go to the  
20 second page, please.

21 It says -- the third paragraph,  
22 it says, "The tone of the afternoon session  
23 can be summed up in the following statement:  
24 When in doubt, report."

25 Did I read that correctly, sir?

1 A. Yes.

2 Q. And can you please underline  
3 that in red, "When in doubt, report"?  
4 Because I think this is critically important.

5 Is that consistent with your  
6 understanding of what EPA expects from  
7 companies like 3M when it's trying to decide  
8 whether or not to report?

9 A. So I think this is a summary  
10 statement that needs to be linked back to  
11 EPA's other guidance and the statute itself  
12 where there needs to be reasonable support  
13 for a conclusion, but that doesn't have to be  
14 absolutely definitive.

15 So that's how I would read this  
16 statement.

17 Q. Okay. But the 3M  
18 representative who attended this meeting  
19 summed it up with these four words, right?

20 A. I see that in this document.

21 Q. Okay. So just so there's no  
22 ambiguity here, uncertainty, 3M -- excuse me.  
23 EPA made crystal clear to industry, including  
24 3M, who was in attendance at this meeting,  
25 that when in doubt, you must report, right?